

Dear Senators MORTIMER, Thayn, Buckner-Webb, and
Representatives DEMORDAUNT, VanOrden, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the State Board of and State Department of Education - State Department of Education:
IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-1604);
IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-1605).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 08/30/2016. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/28/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Education Committee and the House Education Committee

FROM: Legislative Research Analyst - Kristin Ford

DATE: August 11, 2016

SUBJECT: State Board of and State Department of Education - State Department of Education

IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-1604)

IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-1605)

1. Docket No. 08-0203-1604

The Idaho State Board of and State Department of Education submits notice of proposed rulemaking at IDAPA 08.02.03. The purposes of this rule are to incorporate the Idaho Special Education Manual by reference into IDAPA, and to revise and clarify the procedures by which an objection to a student's Individualized Education Program may be made and resolved. The agency has conducted negotiated rulemaking and the "Notice of Intent to Promulgate Rules - Negotiated Rulemaking" was published in the April 6, 2016, edition of the Idaho Administrative Bulletin, volume 16-4, pages 29-30. The proposed rule appears to be within the agency's statutory authority as set out in sections 33-105, 33-1612 and 33-2002, Idaho Code.

2. Docket No. 08-0203-1605

The Idaho State Board of and State Department of Education submits notice of proposed rulemaking at IDAPA 08.02.03. The purpose of this rule is to update the IDAPA rules governing alternative secondary programs regarding student qualifications, instruction, and special services for a student's Individualized Education Program. The agency states that negotiated rulemaking was conducted, and the "Notice of Intent to Promulgate Rules - Negotiated Rulemaking" was published in the April 6, 2016, edition of the Idaho Administrative Bulletin, volume 16-4, page 31. The proposed rule appears to be within the agency's statutory authority as set out in sections 33-105 and 33-1002C, Idaho Code.

cc: State Board of and State Department of Education - State Department of Education
Amy Roche

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1604

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, 33-1612, and 33-2002, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Thursday, October 13, 2016 - 6:00 PM	Monday, October 17, 2016 - 6:00 PM
Lewis & Clark State College Williams Conference Center Clearwater Room 500 8th Avenue Lewiston, ID 83501	College of Western Idaho Nampa Campus Aspen Building, Room 108 6002 Birch Lane Nampa, ID 83687
Monday, October 24, 2016 - 6:00 PM	
Marshall Public Library Minnie Howard Community Room 113 S. Garfield Avenue Pocatello, ID 83204	

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rule would incorporate the Idaho Special Education Manual into this rule chapter. While the manual is referenced in the rule, it has not been formally incorporated by reference. The manual meets the Individuals with Disabilities Education Act requirement of 20 US Code Section 1412, and is consistent with other state and federal regulations regarding the education of individuals with disabilities.

Amendments to the manual since the December 2014 approval include: changing the manual to reflect federal guidance about confidentiality agreements; removing reference to No Child Left Behind due to the passage of the Every Student Succeeds Act (ESSA); removing outdated reference to psychosocial rehabilitation; changing references to highly qualified teacher to align with ESSA; clarifying language regarding Idaho's 10-day rule for parents objections to a district's proposal for an Individual Educational Program; adding additional resources to the Procedural Safeguards Notice and making introduction more parent friendly; removing references to the Appendices that are no longer attached to the manual; and fixing typos throughout document.

Additionally, several revisions within IDAPA 08.02.03.109 regarding Special Education are needed to comply with federal regulations, as well as to clarify language and update the rule to reflect current practice. Changes would clarify the scope of the 10-day rule for objection to a change in an individualized education program or placement, and would align mediation procedures with federal regulations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The “Notice of Intent to Promulgate Rules - Negotiated Rulemaking” was published in the April 6, 2016, Idaho Administrative Bulletin, **Volume 16-4, page 29-30**.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Because of the number of pages within the document, the republication of the text would be unduly cumbersome and expensive. A complete copy of the Idaho Special Education Manual can be found on our website at <http://sde.idaho.gov/topics/admin-rules/>. Incorporation by reference is necessary to ensure compliance with state and federal regulations regarding the education of individuals with disabilities.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Charlie Silva, Director of Special Education, at (208) 332-6806 or csilva@sde.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2016. Written comments will also be accepted during the scheduled public hearings.

DATED this 30th Day of June, 2016.

Sherri Ybarra
Superintendent of Public Instruction
650 West State Street, 2nd Floor
PO Box 83720
Boise, ID 83720-0027
Office: (208) 332-6800
Fax: (208) 334-2228

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1604
(Only Those Sections With Amendments Are Shown.)**

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule: (3-30-07)

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. (3-29-10)

- a.** Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- b.** Health, as revised and adopted on April 17, 2009. (3-29-10)
- c.** Humanities Categories: (3-29-10)
 - i.** Art, as revised and adopted on April 17, 2009; (3-29-10)

- ii. Dance, as revised and adopted on April 17, 2009; (3-29-10)
- iii. Drama, as revised and adopted on April 17, 2009; (3-29-10)
- iv. Interdisciplinary, as revised and adopted on April 17, 2009; (3-29-10)
- v. Music, as revised and adopted on April 17, 2009; (3-29-10)
- vi. World languages, as revised and adopted on April 17, 2009; (3-29-10)
- d. English Language Arts, as revised and adopted on August 11, 2010. (4-7-11)
- e. Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- f. Mathematics, as revised and adopted on August 11, 2010. (4-7-11)
- g. Physical Education, as revised and adopted on April 17, 2009. (3-29-10)
- h. Science, as revised and adopted on April 17, 2009. (3-29-10)
- i. Social Studies, as revised and adopted on April 17, 2009. (3-29-10)
- j. Information and Communication Technology, as revised and adopted on April 22, 2010. (4-7-11)

02. The English Language Development (ELD) Standards. The World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 16, 2012. Copies of the document can be found on the WIDA website at www.wida.us/standards/eld.aspx. (4-4-13)

03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures. The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at www.sde.idaho.gov. (4-7-11)

04. The Idaho English Language Assessment (IELA) Achievement Standards. The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at www.sde.idaho.gov. (4-7-11)

05. The Idaho Standards Achievement Tests (ISAT) Achievement Level Descriptors. Achievement Level Descriptors as adopted by the State Board of Education on April 14, 2016. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. (4-14-16)T

06. The Idaho Extended Content Standards. The Idaho Extended Content Standards as adopted by the State Board of Education on April 17, 2008. Copies of the document can be found at the State Board of Education website at www.boardofed.idaho.gov. (5-8-09)

07. The Idaho Alternate Assessment Achievement Standards. Alternate Assessment Achievement Standards as adopted by the State Board of Education on May 18, 2011. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. (3-29-12)

08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing. As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. (4-2-08)

09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually

Impaired. As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. (4-2-08)

10. The Idaho Special Education Manual. The Idaho Special Education Manual as adopted by the State Board of Education on June 16, 2016. Copies of the document can be found on the State Board of Education website at www.boardofed.idaho.gov. ()

(BREAK IN CONTINUITY OF SECTIONS)

109. SPECIAL EDUCATION.

01. Definitions. The following definitions apply only to Section 109 of these rules. (4-5-00)

a. Adult Student. A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (4-5-00)

b. Department. State Department of Education. (4-5-00)

c. Due Process Hearing. An administrative hearing that is conducted to resolve disputes. (3-29-10)

i. Regular due process hearing regarding issues on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education. (3-29-10)

ii. For disputes concerning discipline for which shortened time lines are in effect, an expedited due process hearing may be requested in accordance with the Individuals with Disabilities Education Act. (3-29-10)

d. Education Agency. Each school district and other public agency that is responsible for providing special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (4-5-00)

e. Governing Special Education Requirements. Sections 33-201, 33-2001 through 2002, 33-2004 through 2005, and 33-2010, Idaho Code; Section 109 of these rules; the Individuals with Disabilities Education Act (IDEA), Parts A and B, (20 U.S.C., Sections 1400-1419); IDEA Regulations (34 C.F.R. Part 300); Idaho Special Education Manual; and special education case law that sets precedence in Idaho. (3-29-10)

f. Idaho Special Education Manual. Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C, Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements. (3-29-10)

g. Special Education. Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech-language pathology services to meet the unique needs of a special education student. (4-5-00)

02. Legal Compliance. The State Department of Education and education agencies shall comply with all governing special education requirements. (4-5-00)

a. The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements. Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements. (4-5-00)

b. The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all

education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures. (4-5-00)

c. Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements. (4-5-00)

d. Each education agency contracting with a private school or facility shall ensure that the private school or facility is approved by the State Department of Education to provide special education services. The Department may approve a private school or facility to provide special education services upon application to the Department if it: (4-5-00)

i. Is an accredited school or a licensed rehabilitation center; and (4-5-00)

ii. Meets minimum health, fire and safety standards; and (4-5-00)

iii. Is nonsectarian; and (4-5-00)

iv. Provides special education services consistent with governing special education requirements. (4-5-00)

v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education. (4-5-00)

e. Education agencies shall employ special education and related services professional personnel using certification standards approved by the State Board of Education or licensing standards adopted by the Bureau of Occupational Licensing. Education agencies shall employ individuals who meet the highest entry-level standard that applies to a specific discipline unless there is a shortage of fully qualified candidates for a specific position. If there is a shortage of fully qualified candidates, the education agency shall hire the most qualified individual available who is making satisfactory progress toward meeting the highest entry-level standard within three (3) years. (4-5-00)

f. Education agencies may employ paraprofessional personnel to assist in the provision of special education and related services to students with disabilities if they meet standards established by the State Department of Education. (4-5-00)

g. Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance with the Individuals with Disabilities Education Act. (4-5-00)

h. Education agencies shall establish a team process to problem solve and plan general education interventions to ensure that referrals to special education are appropriate. (4-5-00)

03. Eligibility for Special Education. The State Department of Education shall provide state eligibility criteria for special education services for categorical eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho Special Education Manual. The total timeline from the date of receipt of written parental consent for an initial evaluation to the date of determination of eligibility for special education and related services must not exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. (4-7-11)

04. Individualized Education Programs. Each education agency shall develop an individualized education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the determination that the student needs special education and related services to the date of implementation of the initial IEP shall not exceed thirty (30) calendar days. A new IEP shall be developed at least annually, on or before the date the previous IEP was developed. (3-25-16)

a. IEP team meetings shall be convened upon reasonable request of any IEP team member at times other than the annual review. If the education agency refuses to convene an IEP team meeting requested by a parent or adult student, the agency shall provide written notice of the refusal. (4-5-00)

b. Education agencies shall document the attendance of all participants at each IEP team meeting. Any participant who does not agree with an IEP team decision regarding a student's educational program may place a minority report in that student's file. A minority report shall not prevent implementation of an IEP team decision. (4-5-00)

c. The IEP team shall determine the student's placement in the least restrictive environment. (5-3-03)

d. At the discretion of the education agency, an individualized family service plan (IFSP) may be used in place of an IEP if: (4-5-00)

i. The child is ages three (3) through five (5), and (4-5-00)

ii. The child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP, and (4-5-00)

iii. The child's parents provide written consent to use the IFSP, and (4-5-00)

iv. The IFSP is developed in accordance with IDEA Part B policies and procedures. (3-29-10)

v. Nothing in this part requires education agencies to develop IFSPs rather than IEPs for three (3) through five (5) year old nor to implement more than the educational components of the IFSP. (4-5-00)

e. When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short-term) IEP shall be implemented pending development of the standard IEP. (4-5-00)

f. If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student's most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education. (4-5-00)

05. Procedural Safeguards. Education agencies will use appropriate procedural safeguards consistent with the Individuals with Disabilities Education Act. (8-4-99)

a. If a parent or adult student disagrees with an individualized education program ~~change or placement change proposed by the district~~ (IEP) team's proposed IEP for the student, the parent or adult student may file a written objection to all or parts of the proposed ~~change~~ IEP. If the written objection is emailed, postmarked or hand delivered within ten (10) calendar days of the date the parent or adult student receives written notice of the proposed ~~change~~ IEP, the proposed change cannot be implemented for fifteen (15) calendar days, or as extended through mutual agreement by the district and the parent or adult student while the parties work to resolve the dispute.

~~Informal methods such as additional~~ Parties may choose to hold additional IEP team meetings which may be facilitated by the State Department of Education (SDE) or request voluntary mediation ~~may be used to resolve the disagreement through the SDE.~~ If these methods fail or are refused, ~~the education agency may request the proposed IEP shall be implemented after fifteen (15) calendar days unless~~ a due process hearing is filed by the parents or adult student, during which time the student shall remain in the current educational placement during the pendency of any administrative or judicial proceeding, unless the district/adult student agree otherwise, ~~to obtain a hearing officer's decision regarding the proposed change.~~ The written objection cannot be used to prevent the education agency from placing a student in an interim alternative educational setting in accordance with IDEA discipline procedures, or to challenge an eligibility/identification determination. (4-5-00)()

b. Mediation may be requested by an education agency, parent, or adult student, or offered by the State Department of Education at any time. The Department shall screen all such requests to determine appropriateness. Any time a hearing is requested, the Department shall offer mediation using policies and requirements set forth in the Individuals with Disabilities Education Act regulations. If the Department appoints a mediator, the Department shall be responsible for compensating the mediator. All mediation participants ~~shall be required to sign a e~~ will receive a copy of the Notification of Mediation Confidentiality ~~pledge form.~~ Attorney fees may not be awarded for a mediation that is conducted prior to a request for a due process hearing. (3-29-10)()

c. The State Department of Education shall administer a single-tiered due process hearing system to resolve disputes between education agencies and parents or adult students. When a due process hearing is requested, the superintendent, special education director, or other agency administrator shall inform the agency's board of trustees or other governing body of the request. The education agency shall immediately notify the Department's Director of Special Education of any request for a due process hearing. Within ten (10) calendar days of a written request for a regular hearing, or within five (5) business days of a written request for an expedited hearing, an impartial hearing officer shall be assigned by the Department. The Department shall maintain a list of trained hearing officers and their qualifications. (3-29-10)

d. The education agency that is a party to the hearing shall be responsible for compensating the hearing officer and paying for the cost of a verbatim transcript of the hearing. (4-5-00)

e. Due process hearings shall be conducted pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Education Act (~~IDEA~~) requirements, and the Idaho Special Education Manual, incorporated by reference in Section 004 of this rule. In case of any conflict between the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General" and the IDEA, the IDEA shall supersede the IDAPA 04.11.01, and IDAPA 04.11.01 shall supersede the Idaho Special Education Manual. (3-29-10)()

f. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within forty-five (45) calendar days of the date a regular hearing is requested, unless a specific extension of this time line is requested by one (1) of the parties and granted by the hearing officer. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within twenty (20) calendar days of a written request for an expedited hearing, unless a specific extension of this time line has been granted. An extension of the time line for an expedited hearing shall not exceed an additional twenty-five (25) calendar days, and may be granted only if requested by one (1) of the parties and agreed to by both parties. The decision shall be sent to the parent or adult student, the education agency administrator, their respective representatives, and the State Department of Education. (4-5-00)

g. The hearing officer's decision shall be binding unless either party appeals the decision by initiating a civil action. The hearing officer's decision shall be implemented not later than fourteen (14) calendar days from the date of issuance unless an appeal is filed by a parent or adult student or the decision specifies a different implementation date. An appeal to civil court must be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision. (4-5-00)

h. During the hearing the education agency shall provide reasonable accommodations as required by federal and state regulations. Disputes concerning reasonable accommodations shall be referred to the U.S. Department of Education's Americans with Disabilities Act (ADA) Committee for resolution. (4-5-00)()

i. During the pendency of any due process hearing or civil appeal the child's educational placement shall be determined by the Individuals with Disabilities Education Act "stay put" requirements. (4-5-00)

j. A parent or adult student has the right to an independent educational evaluation (IEE) at public expense if the parent or adult student disagrees with an evaluation obtained by the education agency. Whenever an ~~independent educational evaluation~~ IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent or adult student's right to an IEE. If an education agency has cost as one (1) of the criteria the education agency uses when it initiates an evaluation, the education agency may apply that criteria to independent educational evaluations. However, the parent or adult student has the right to demonstrate that unique circumstances justify an IEE that falls outside the education agency's cost criteria, and if so demonstrated, that IEE shall be publicly funded. A due process hearing may be initiated by the education agency to determine if the evaluation conducted by the education agency is appropriate. If the final decision of a hearing officer, or civil court, if the hearing officer's decision is appealed, is that the evaluation conducted by the education agency is appropriate, the parent or adult student still has the right to an independent educational evaluation, but not at the education agency's expense. (4-5-00)()

k. Student records shall be managed in accordance with IDEA and Family and Educational Rights and Privacy Act regulations governing security, confidentiality, access, maintenance, destruction, inspection and amendment. (4-5-00)

06. Assistive Technology Devices. Education agencies may hold a parent liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the education agency if it is lost, stolen, or damaged due to negligence or misuse at home or in another setting outside of school time. (4-5-00)

07. Diplomas and Graduation. School districts shall use a regular diploma for students who are eligible for special education at the completion of their secondary program. The transcript serves as a record of individual accomplishments, achievements, and courses completed. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities. If a student is not granted a regular high school diploma or if a regular high school diploma is granted for completing requirements that are not comparable to regular graduation requirements, a student who is eligible for special education is entitled to receive a free appropriate public education through the semester in which the student turns twenty-one (21) years of age or until the student completes requirements that are comparable to regular graduation requirements, whichever comes first. (4-5-00)

08. Special Education Advisory Panel. The State Superintendent of Public Instruction shall appoint members to serve on the Special Education Advisory Panel. Panel members shall elect annually an individual to serve a one (1) year term as vice-chair followed by a one (1) year term as chair. (4-5-00)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1605

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-1002, and 33-1612, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Thursday, October 13, 2016 - 6:00 PM	Monday, October 17, 2016 - 6:00 PM
Lewis & Clark State College Williams Conference Center Clearwater Room 500 8th Avenue Lewiston, ID 83501	College of Western Idaho Nampa Campus Aspen Building, Room 108 6002 Birch Lane Nampa, ID 83687
Monday, October 24, 2016 - 6:00 PM	
Marshall Public Library Minnie Howard Community Room 113 S. Garfield Avenue Pocatello, ID 83204	

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rule change will update the section of this chapter that governs Alternative Secondary Programs which has not been amended since 1997. Additionally, the passage of House Bill 300 in 2015 added sixth grade to the grades eligible for alternative secondary program funding. The changes include: updating terminology; including sixth grade as part of the student qualification; removing limited English proficiency as a qualifier; aligning the instruction section to current practices; and clarifying the obligation to follow the Individuals with Disabilities Education Act (IDEA).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The "Notice of Intent to Promulgate Rules - Negotiated Rulemaking" was published in the April 6, 2016, Idaho Administrative Bulletin, [Volume 16-4, page 31](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michelle Clement Taylor, Coordinator for School Choice, at (208) 332-6963 or at mtaylor@sde.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2016. Written comments will also be accepted during the scheduled public hearings.

DATED this 30th Day of June, 2016.

Sherri Ybarra
Superintendent of Public Instruction
650 West State Street, 2nd Floor
PO Box 83720
Boise, ID 83720-0027
Office: (208) 332-6800
Fax: (208) 334-2228

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1605
(Only Those Sections With Amendments Are Shown.)**

110. ALTERNATIVE SECONDARY PROGRAMS (SECTION 33-1002; 33-1002C; 33-1002F, IDAHO CODE).

Alternative secondary programs are those that provide special instructional courses and offer special services to eligible at-risk youth to enable them to earn a high school diploma. ~~Some of~~ Designated differences must be established between the alternative school programs and the regular secondary school programs. Alternative secondary school programs will include course offerings, teacher/pupil ratios and evidence of teaching strategies that are clearly designed to serve at-risk youth as defined in this section. Alternative high school programs conducted during the regular school year will be located on a separate site from the regular high school facility or be scheduled at a time different from the regular school hours. (4-1-97)()

01. Student Qualifications. An at-risk youth is any secondary student grade ~~seven~~ six through twelve (~~7~~-12) who meets any three (3) of the following criteria, Subsections 110.01.a. through 110.01.f.g., or any one (1) of criteria in Subsections 110.01.g.h. through 110.01.m.n. (3-30-07)()

- a. Has repeated at least one (1) grade. (4-1-97)
- b. Has absenteeism that is greater than ten percent (10%) during the preceding semester. (4-1-97)
- c. Has an overall grade point average that is less than 1.5 (4.0 scale) prior to enrolling in an alternative secondary program. (4-1-97)
- d. Has failed one (1) or more academic subjects in the past year. (4-1-97)()
- e. Is below proficient, based on local criteria and/or standardized tests. ()
- ef. Is two (2) or more ~~semester~~ credits per year behind the rate required to graduate or for grade promotion. (4-1-97)()
- fg. Is a limited English proficient student who has not been in a program more than three (3) years. Has attended three (3) or more schools within the previous two (2) years not including dual enrollment. (3-30-07)()

- ~~gh.~~ Has documented or pattern of substance abuse ~~behavior~~. (4-1-97)()
- ~~hi.~~ Is pregnant or a parent. (4-1-97)
- ~~ij.~~ Is an emancipated youth or unaccompanied youth. (4-1-97)()
- ~~jk.~~ Is a previous dropout. (4-1-97)
- ~~kl.~~ Has serious personal, emotional, or medical ~~problems~~ issue(s). (4-1-97)()
- ~~lm.~~ ~~Is~~Has a court or agency referral. (4-1-97)()
- ~~mn.~~ ~~Upon recommendation of the school district as determined by locally developed criteria for disruptive student behavior~~ Demonstrates behavior that is detrimental to their academic progress. (4-1-97)()
- 02. Instruction.** Special instruction courses for at-risk youth enrolled in an alternative secondary program will include: (4-1-97)
- ~~a.~~ ~~Academic skills that include language arts and communication, mathematics, science, and social studies~~ Core academic content that meets or exceeds minimum state standards. (4-1-97)()
- ~~b.~~ ~~A personal and career counseling component~~. (4-1-97)
- ~~eb.~~ A physical fitness ~~and~~ personal health component. (4-1-97)()
- ~~dc.~~ ~~A state division approved vocational-~~ Career and technical education component approved by the state division of career technical education. (4-1-97)()
- ~~ed.~~ A personal finance, parenting, and child care component ~~with parenting skills emphasized~~; and (4-1-97)()
- ~~e.~~ A personal and career counseling component. ()
- 03. Graduation Credit.** Graduation credit may be earned in the following areas: academic subjects, electives, and approved work-based learning experiences. Nonacademic courses, i.e., classroom and office aides do not qualify for credit unless they are approved work-based learning experiences. (4-5-00)
- 04. Special Services.** Special services, ~~where appropriate~~ for at-risk youth enrolled in alternative secondary programs, include the following where appropriate: (4-1-97)()
- a.** A day care center when enrollees are also parents. This center should be staffed by a qualified child care provider. (4-1-97)
- b.** Direct social services that may include officers of the court, social workers, counselors/psychologists. (4-1-97)
- c.** All services in accordance with the student's Individualized Education Program. ()